

MBPA RULES OUTLINE

Introduction: This rules outline is a working document containing suggested major headings. The outline contains references to existing rules, statutory language, and interpretive letters. Example initial questions for each section are identified in red. The purpose of these questions is to stimulate rules discussion and negotiation rather than provide actual questions to be used in the final rules draft.

A. PURPOSE, SCOPE AND COVERAGE

[CC041006: This Section will cover the Purpose (what are the Act and the Rules set forth to accomplish), as well as the Scope and Coverage of the law (who does it reach and why; what does it reach and why)]

B. DEFINITIONS

WAC 208-660-010
RCW 19.146.010

-What definitions are required to understand the rules?

C. EXEMPTION FROM LICENSING

WAC 208-660-020
WAC 208-660-025
RCW 19.146.020(1)

-Am I exempt from all of the provisions of the Mortgage Broker Practices Act?
-Am I exempt from some provisions of the Mortgage Broker Practices Act?

1. OTHER EXEMPTIONS

2. COMPUTER LOAN INFORMATION SYSTEMS
RCW 19.146.020(2) through (4)

D. MORTGAGE BROKER LICENSING

WAC 208-660-030
RCW 19.146.010(12)
RCW 19.146.200(1)
Interpretive Letter 98-04 MB
RCW 19.146.205 (1)(f)
RCW 19.146.205(4)(a)(b) and (c)
WAC 208-660-080
WAC 208-660-08005
RCW 19.146.210(4)
RCW 19.146.210(6)
RCW 19.146.210(1)(g)
RCW 19.146.245
RCW 19.146.0201(12)
RCW 19.146.250

- Do I need to apply for a mortgage broker license?
- If I need to apply for a mortgage broker license, how do I apply for the license?
- If I need to apply for a license, do I have to have a surety bond?
- Does the Department accept any alternatives to a surety bond?
- How do I calculate the amount of the surety bond?
- Once I am licensed, how often do I have to renew my license?
- If I meet most of the requirements for licensing, may the director issue me an interim license?
- Can prior agency findings affect my ability to get a license?
- What other situations might affect my ability to get a license?
- Can I assign, sell or otherwise allow someone to use my license?
- May I operate my company under a different name than my licensed name?

E. LOAN ORIGINATOR LICENSING

RCW 19.146.010(10)
 RCW 19.146.0201(12)
 RCW 19.146.NEW SECTION 33(4)
 RCW 19.146.NEW SECTION 34
 RCW 19.146.NEW SECTION 35
 RCW 19.146.NEW SECTION 36

- How do I know if I need a license to continue doing my job?
- If I am a designated broker do I need to apply for a loan originator license?
- What if I have a criminal record?
- What if I have been the subject of a disciplinary action?
- Once I am licensed, how often do I have to renew my license?
- Can I assign or sell my loan originator license?
- If I work for more than one mortgage broker, do I have to have a separate license for each?
- If I work for more than one mortgage broker, can I take an application on behalf of more than one of them at a time?
- What are my obligations to pay third party providers?
- What actions can the director take to implement the licensing of loan originators?
- Am I authorized to accept funds from consumers for the payment of third party services?
- May I operate my business independently?
- May I conduct business under a name different than my mortgage broker's name?

1. INDEPENDENT CONTRACTORS

WAC 208-660-120

F. OUT OF STATE MORTGAGE BROKERS AND LOAN ORIGINATORS

WAC 208-660-090
 WAC 208-660-09005
 WAC 208-660-09010
 WAC 208-660-09015
 WAC 208-660-09020
 RCW 19.146.220(7)
 RCW 19.146.260
 Version 20060410

- If I am licensed in other states, is my license valid in Washington?
- If I am licensed by Washington for an out-of-state location, do I have to have a registered agent in Washington?
- If I am licensed by Washington for an out-of-state location, how do I change my registered agent or the address?
- How does the registered agent for an out-of-state licensee resign?
- What role does a registered agent play for an out-of-state licensee?
- If an out-of-state licensee does not appoint a registered agent, who may accept service on behalf of the out-of-state licensee?

G. OFFICE LOCATIONS

- What is a fixed physical location?
- If I am a licensed loan originator operating from my house do I need any additional license?

H. MORTGAGE BROKER BRANCH OFFICE LICENSING

WAC 208-660-060
WAC 208-660-070
RCW 19.146.250(2)
RCW 19.146.265
Department Interpretive Letters: 96-03 MB, 99-04 MB

- What locations in addition to my main office location need to be licensed?
- What does it mean to be in good standing?
- May I operate a branch office under a different name than my main office?
- What requirements must I meet to establish a branch office?
- Do I have to renew my branch office license?
- Do I have to display the branch office license in the branch office?
- Are net branch operations allowed?

I. DESIGNATED BROKERS

1. DESIGNATED BROKER RESPONSIBILITIES

WAC 208-660-040
WAC 208-660-042
RCW 19.146.010(6)
RCW 19.146.200(4)
RCW 19.146.210(1)(e)
RCW 19.146.215

- If I apply for a mortgage broker license, do I need to list a supervising designated broker?
- If I am a designated mortgage broker what are my duties in supervising a mortgage broker?
- Must a designated mortgage broker applicant pass an examination or test?
- If I am a designated broker supervising a mortgage broker what experience requirements must I meet?
- If I am a designated broker what continuing education requirements must I meet to keep my license current?

-If I am a designated broker and have taken classes in another state, will those classes count towards my Washington education requirements?

2. DESIGNATED BROKER LIABILITIES

- As a licensed mortgage broker, am I liable for the actions of any other people?
- What are my obligations to pay third party providers?
- What is supervisory authority?
- What will determine if I had specific knowledge of an act?
- What is the test for “exercise of reasonable care and inquiry?”

J. MORTGAGE BROKER LICENSE APPLICATION

WAC 208-660-050

RCW 19.146.205

RCW 19.146.205(2)

RCW 19.146.210

RCW 19.146.210(1)(d), (e) and (f)

- If I need to apply for a license, what information must I submit to DFI?
- If I am a designated broker or principal in a company applying for a license, or I am the potential licensee, may the director review my criminal history to determine whether or not I qualify for a license?
- Once I submit my paperwork for a license, when will DFI issue my license?

K. MORTGAGE BROKER BRANCH LICENSE APPLICATION

RCW 19.146.265

- If I need to apply for a branch license, what information must I submit to DFI?
- Once I submit my paperwork for a branch license, when will DFI issue my license?

L. LOAN ORIGINATOR LICENSE APPLICATION

RCW 19.146.NEW SECTION 32

RCW 19.146.NEW SECTION 33(6)

RCW 19.146.NEW SECTION 33(1)

- If I need a license, what information will I need to provide?
- How quickly will DFI issue the new loan originator licenses?
- Once I submit my paperwork for a license, when will DFI issue my license?

M. EXEMPT MORTGAGE BROKER DESIGNATION APPLICATION

- How do I request an application for exempt mortgage broker status?
- What information must I provide to receive my exempt status certificate?

N. TESTING OF DESIGNATED BROKER AND LOAN ORIGINATOR

RCW 19.146.210

Section 33

Version 20060410

- Is there a difference between an examination and a test?
- If I have passed the test for a designated broker will that test suffice for the loan originator test?
- Will the test be different for designated mortgage brokers and loan originators?
- What type of questions will be on the test?
- What score must I have in order to pass the test?
- If I fail, when can I retake the test?
- Who will be authorized to conduct the test?

O. CONTINUING EDUCATION

WAC 208-660-045
RCW 19.146.215

- Who will be authorized to conduct continuing education programs?
- How does DFI approve professional organizations wishing to offer continuing education courses?
- Will DFI accept continuing education taken in other jurisdictions?
- Will my license be renewed if I do not obtain the required continuing education credits?

P. TRANSFERS BY LICENSEES; CHANGE IN PRINCIPAL OR DESIGNATE BROKER

WAC 208-660-110

- Can I transfer, assign, sell or loan my license?
- How must I report a change in principal or designated broker?

Q. DISCLOSURE OF SIGNIFICANT AND ADVERSE DEVELOPMENTS

WAC 208-660-150
RCW 19.146.110

- Must I inform DFI if I have been convicted of a crime or have been the subject of an administrative enforcement action?
- Must I inform DFI if I file for bankruptcy?

R. PROHIBITED PRACTICES

WAC 208-660-190
RCW 19.146.0201

- What does it mean to defraud or mislead?
- Can I receive compensation for my “best efforts” to obtain a loan?
- Can I influence an appraisal by paying a higher appraisal fee?
- Can I advertise mortgage products that are not available?
- What is “bait and switch” advertising?
- What federal statutes and regulations govern my business?
- What if I fail to comply with federal statutes and regulations?
- Are there any specific requirements for a Realtor acting as a loan originator?

S. DISCLOSURE REQUIREMENTS

WAC 208-660-130
RCW 19.146.030 All
RCW 19.146.0201(11)
Interpretive Letter 98-02 MB
Model Disclosure Forms from Interpretive Letter Packet

- What disclosures am I required to make to a borrower?
- Where in my disclosure document do I disclose my mortgage broker fees?
- When I make the required written disclosure to the borrower of the fees and costs they will be required to pay, do I have to disclose the distribution or breakdown of fees, discounts, or points with the lender?
- What are my good faith estimate disclosure requirements regarding yield spread premiums and RESPA?
- Must I disclose the annual percentage rate, finance charge, amount financed, total amount of all payments, number of payments, amount of each payment, amount of points or prepaid interest and the condition and terms under which any loan terms may change between the time of disclosure and closing of the loan?
- Do I have to meet any federal law requirements in addition to these requirements?
- Can my fees increase from my initial disclosure?
- What happens if they do increase and I have not followed the requirements?

T. MORTGAGE BROKER AND LOAN ORIGINATOR FEES

WAC 208-660-200
RCW 19.146.0201(11)
RCW 19.146.030(2)(b)
RCW 19.146.030(4)
RCW 19.146.070
RCW 19.146.200(2)

- Can a loan originator collect compensation for the brokering of a loan?
- What if my actual fees exceed those I provided to the borrower in the disclosure?
- Can I sue a borrower to collect the fees for my services?
- Can a loan originator to sue a borrower for collection of the fees for our services?
- If the borrower is solely responsible for the loan's failure to close, can I still collect my fees?
- Can I charge the borrower discount points?

U. CONTRACTS

WAC 208-660-140
RCW 19.146.040(2)

- Are agreements that loan originators make with borrowers binding on the mortgage broker?
- Are agreements required to be in writing?

V. TRUST ACCOUNTING (or possibly FUNDS HELD IN TRUST)

WAC 208-660-08010 through WAC 208-660-08040
RCW 19.146.050
RCW 19.146.070(3)
Interpretive Letter 94-1 MB and 94-2 MB
Version 20060410

- Can loan originators accept trust fund money?
- How must funds held in trust be designated?
- Can I deposit funds other than trust funds into my trust account?
- What are the disbursement requirements for funds held in trust?
- What are the requirements for computerized trust accounting systems?
- What are the requirements for automated check writing systems?

W. RECORD KEEPING REQUIREMENTS

RCW 19.146.060

97-07 MB Interpretive Letter

- What are the recordkeeping requirements for my advertising materials?
- What are examples of records I must retain?
- Are records the property of the loan originator or the mortgage broker?
- What records must I make available to borrowers?
- How must my accounting and personnel records be maintained?
- How long must records be retained?
- What if I wish to keep my records at an out-of-state location?

X. FEES AND COSTS

WAC 208-660-060

WAC 208-660-061

WAC 208-660-062

RCW 19.146.205(3)

RCW 19.146.223

RCW 19.146.228

RCW 19.146.265

RCW 19.146.NEW SECTION 32(3)

- Do I have to pay a licensing application fee to DFI?
- Is there a fee for renewing my license?
- How much do I have to pay for a license for a branch office?
- Is there a fee to renew my branch office license?
- If I need a loan originator license, do I have to pay a licensing application fee to DFI?
- Can a mortgage broker pay a loan originator's fees?
- How will fees be charged if a loan originator wants to work for more than one mortgage broker?
- Can the Department increase the fees I will be charged?
- Under what circumstances can fees be waived?
- Will my license expire automatically if I do not pay my fees?

Y. ANNUAL REPORTING

RCW 19.146.NEW SECTION 31

- Am I required to provide an annual report of my brokering activities?
- What information am I required to report?
- When must I file the report?

- Must the report be accurate?
- What are the penalties for failing to report?
- How will DFI determine if my report was accurate?
- What are the penalties for an inaccurate report?

Z. DIRECTOR AND AGENCY POWERS

1. EXAMINATION AUTHORITY

RCW 19.146.235

- As a licensee, will my business be subject to periodic examinations?
- What dictates whether I will be examined?
- How often can I expect to be examined?
- Will I be charged for an examination?

2. EXAMINATION PROCESS

RCW 19.146.060

RCW 19.146.235

- What is the purpose of a periodic examination?
- What is the frequency of the periodic examinations?
- If the periodic examination findings clearly identify the need to expand the scope of the examination, how much notice will I receive?
- What will the expanded examination include?
- At what location must my books and records be available to the agency for examination?
- Do I have to pay travel costs for an out-of-state examination?
- If examination findings show that corrective action needs to be taken, what will happen?
- How much time should I expect an examination to take?
- Can I continue business while I'm being examined?

3. EXAMINATION PROCEDURES

WAC 208-660-060

- How much will I be charged for a periodic examination of my books and records?
- What is the scope of a periodic examination?
- What are the protocols for the findings and corrective action directed from an examination?
- If I must take corrective action as the result of an examination, will the frequency of periodic examinations change?
- May DFI use independent professionals to conduct a periodic examination?
- May DFI use an independent professional's report instead of conducting all or portions of a periodic examination?
- What criteria will DFI use to determine the acceptability of an independent professional's report?
- What other powers can the director exercise during an examination?

4. INVESTIGATION AUTHORITY

RCW 19.146.235

-What are the director's investigative powers?

INVESTIGATION PROCESS

WAC 208-660-060

RCW 19.146.235

RCW 19.146.228(2)

-What is the scope of an investigation?

-What are my rights in an investigation?

-Will I be charged a fee when the department investigates my books and records and finds no violation?

-Will I be charged a fee when the department investigates my books and records and finds a violation?

-What are the circumstances under which an investigation fee might be waived?

5. ENFORCEMENT AUTHORITY

WAC 208-660-160

WAC 208-660-165

RCW 19.146.220(3)(b)

RCW 19.146.221

-What law governs DFI's enforcement authority?

-What happens if I do not respond to the agency's actions?

-What are my rights in an enforcement action?

6. ENFORCEMENT PROCESS

7. COMPLAINT PROCESS

AA. MORTGAGE BROKER COMMISSION

WAC 208-660-210

RCW 19.146.280

-What is the purpose of the Commission?

-How many members sit on the Commission?

-What authority does the Commission possess?

AB. OTHER REQUIREMENTS

WAC 208-660-145

RCW 19.146.080

Bond Claim Procedures

DFI Interpretive Letter dated March 3, 1995

-What are my obligations to the borrower if a loan is not closed?

AC. AGENCY GUIDANCE AND TECHNICAL ASSISTANCE (see RCW 35.04)

- What is the process for making a claim on a surety bond?
- How can I ask the DFI for an interpretation?
- Can I request technical assistance?
- Under what situations is appropriate to request technical assistance?

AD. FORMS